

HOUSE No. 4109

Message from His Excellency the Governor recommending legislation to make appropriations for the fiscal year 2009 to provide for supplementing certain existing appropriations and for certain other activities and projects. May 7, 2009.

The Commonwealth of Massachusetts



DEVAL L. PATRICK
GOVERNOR

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EXECUTIVE DEPARTMENT
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May 7, 2009

To the Honorable Senate and House of Representatives:

I am filing for your consideration a bill containing solutions to allow for a balanced budget for the remainder of Fiscal Year 2009. In addition, I am recommending Fiscal Year 2009 supplemental appropriations totaling \$173.6 million in order to address immediate deficiencies.

Pursuant to Section 9C of Chapter 29 of the Massachusetts General Laws, Administration and Finance Secretary Leslie A. Kirwan has advised me of a probable deficiency of revenue of approximately \$953 million with respect to the Fiscal Year 2009 General Appropriation Act, including over \$456 million of revenue loss in April 2009 and \$441 million in anticipated revenue loss through the remainder of the fiscal year. This shortfall also reflects unavoidable spending increases within public safety, counter-cyclical programs within the Department of Transitional Assistance, and other critical areas. Combining these spending exposures with a number of surpluses in various budgetary accounts results in a net non-tax revenue and spending exposure

of approximately \$56 million. The supplemental items to fund existing obligations include but are not limited to:

- \$75.8 million for state employee health benefits. This amount includes \$28.5 million in funding that is necessary because the proposal to tier employee health contributions based on ability to pay was not implemented in fiscal year 2009;
- \$32 million for the County Sheriffs Reserve, which represents mission critical operating costs for the seven county sheriffs;
- \$28.4 million for the MassHealth program to meet increasing service utilization costs

At this point in the year, state agencies have spent or obligated the majority of available funds; therefore, appropriation reductions are not a viable solution to address the shortfall.

One of the largest components of my plan to achieve budget balance is to access approximately \$412 million in State Fiscal Stabilization Funds included in the American Recovery and Reinvestment Act of 2009 and authorized for distribution by the U.S. Department of Education.

I also propose drawing an additional \$461 million from the Commonwealth's Stabilization Fund, while proposing to suspend a \$100 million deposit authorized in Fiscal Year 2008.

In addition, The Massachusetts Convention Center Authority has volunteered to contribute \$50 million from its reserves to help close the most recent budget shortfall.

Finally, I propose to reduce the contribution to the Health Safety Net Trust Fund by \$15 million in order to meet projected deficiencies within the MassHealth program. Even with this reduction, the Fund is expected to end its year with a surplus. At the same time, utilization within the MassHealth program has increased above budgeted projections; therefore, I propose to reduce the transfer to the Health Safety Net Trust Fund (via the Commonwealth Care Trust Fund) by \$15 million, and redirect these funds to help offset deficiencies within MassHealth.

This bill also decouples our state tax laws from certain provisions of the new federal stimulus law that would otherwise reduce Fiscal Year 2010 state revenue by more than \$100 million. It also avoids state taxation of certain additional federal unemployment benefits.

While we have managed this historic downturn responsibly and aggressively, no economic expert has been able to predict just how rapidly our revenues would fall. Throughout the country, state leaders are grappling with how to close widening budget gaps. I ask for your quick action on the solutions we have offered and I look forward to continuing to work in partnership to find short and long-term solutions to these challenges. I am confident that by working together we can set the Commonwealth on a course to a stronger and more prosperous future. These unprecedented and quickly evolving fiscal times highlight the need for short-term solutions as well as long-term reform to control spending.

Sufficient revenues are estimated to be available to finance these appropriations. I urge your prompt and favorable consideration of this bill.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Deval Patrick", with a stylized flourish at the end.

DEVAL L. PATRICK,
Governor.

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine.

MAKING APPROPRIATIONS FOR THE FISCAL YEAR 2009 TO PROVIDE FOR SUPPLEMENTING CERTAIN EXISTING APPROPRIATIONS AND FOR CERTAIN OTHER ACTIVITIES AND PROJECTS.

Whereas, The deferred operation of this act would tend to defeat its purposes, which are forthwith to make supplemental appropriations for fiscal year 2009 and to make certain changes in law, each of which is immediately necessary to carry out those appropriations or to accomplish other important public purposes, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

JUDICIARY

Committee for Public Counsel Services

0321-1510	\$9,384,188
0321-1520	\$2,075,987

OFFICE OF THE STATE COMPTROLLER

Office of the State Comptroller

1599-3384	\$4,090,226
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EXECUTIVE OFFICE FOR ADMINISTRATION AND FINANCE

Group Insurance Commission

1108-5200	\$75,800,000
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Human Resources Division

1750-0100	\$250,000
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EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES

Department of Transitional Assistance

4403-2000	\$93,073
4403-2120	\$4,572,466

Division of Medical Assistance

4000-0500	\$28,439,239
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EXECUTIVE OFFICE OF TRANSPORTATION AND PUBLIC WORKS

Highway Department

6010-0002	\$579,894
6030-7201	\$4,490,922

EXECUTIVE OFFICE OF PUBLIC SAFETY AND SECURITY

Office of the Secretary of Public Safety and Security

8910-0000	\$32,000,000
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SECTION 2A. To provide for certain unanticipated obligations of the commonwealth, to provide for an alteration of purpose for current appropriations, and to meet certain requirements of law, the sums set forth in this section are hereby appropriated from the General Fund unless specifically designated otherwise in this section, for the several purposes and subject to the conditions specified in this section, and subject to the laws regulating the disbursement of public funds for the fiscal year ending June 30, 2009. These sums shall be in addition to any amounts previously appropriated and made available for the purposes of those items.

OFFICE OF THE STATE COMPTROLLER

Office of the State Comptroller

1599-1030 For court monitor costs in compliance with the terms of the Rolland settlement agreement, dated June 16, 2008, Civil Action No. 98-30208-KPN, filed in the United States District Court for the District of Massachusetts in order to provide active services for class members; provided, that the comptroller, in consultation with the executive office of health and human services and the department of developmental services, shall determine the annual spending for court monitor fees; provided further, that not more than \$2,263,000 shall be expended in fiscal year 2010; and provided further, that the funds provided in this item shall be available for expenditure through June 30, 2012\$7,000,000

EXECUTIVE OFFICE FOR ADMINISTRATION AND FINANCE

Office of the Secretary of Administration and Finance

1599-1031 For a reserve to meet costs identified by the department of public health associated with responding to outbreak of the H1N1 virus; provided, that funds may be expended on staffing costs within the state laboratory and in the bureau of emergency preparedness, dissemination of public information, antiviral medication for the treatment or prevention of the H1N1 virus, and purchase of laboratory equipment specific testing for the H1N1 virus; provided further, that the secretary of health and human services shall submit a spending plan to the executive office for administration and finance before the disbursement of funds from this reserve; provided further, the department of public health and the executive office for health and human services shall seek federal reimbursement for any eligible expenditures from this reserve.....\$2,845,216

1599-4282 For a reserve to meet the fiscal year 2009 costs of salary adjustments and other economic benefits authorized by the collective bargaining agreement between the commonwealth and the Service Employees International Union (Units 8 and 10), and to meet the fiscal year 2009 costs of salary adjustments and other economic benefits necessary to provide equal adjustments and other economic benefits necessary to provide equal adjustments and benefits to employees employed in confidential positions which otherwise would be covered by this agreement; provided, that the personnel administrator, with the approval of the secretary of administration and finance, shall determine these adjustments and benefits for the confidential employees in accordance with the collective bargaining agreement then in effect which otherwise would cover these positions; and provided further, that the secretary may transfer from the sum appropriated in this item to other items of appropriation and allocations thereof for fiscal year 2009 amounts that are necessary to meet these costs where the amounts otherwise available are insufficient for the purpose, in accordance with a transfer plan which shall be filed in advance with the house and senate committees on ways and means\$1,931,528

SECTION 3. Section 1 of chapter 62 of the General Laws is hereby amended by inserting after the numeral 72, in line 8, as appearing in the 2006 Official Edition, the following numeral:- 139C.

SECTION 4. Paragraph (1) of subsection (d) of section 2 of said chapter 62, as so appearing, is hereby amended by adding the following clause:-

(P) The deduction described in section 163(e)(5) of the Code to the extent increased by amendments to section 163(e)(5)(F) and section 163(i)(1) inserted by section 1232 of the American Recovery and Reinvestment Act of 2009.

SECTION 5. The definition of “gross income” in section 1 of chapter 63 of the General Laws, as so appearing, is hereby amended by adding the following sentence:- Gross income shall be determined without regard to section 108(i) of the Code.

SECTION 6. The definition of “net income” in said section 1 of said chapter 63, as so appearing, is hereby amended by adding the following clause:-

(f) the deduction described in section 163(e)(5) of the Code to the extent increased by amendments to section 163(e)(5)(F) and section 163(i)(1) inserted by section 1232 of the American Recovery and Reinvestment Act of 2009.

SECTION 7. Paragraph 3 of section 30 of chapter 63, as so appearing, is hereby amended by adding the following sentence:- Gross income shall be determined without regard to section 108(i) of the Code.

SECTION 8. Paragraph 4 of said section 30 of said chapter 63, as so appearing, is hereby amended by adding the following clause:-

(vii) the deduction described in section 163(e)(5) of the Code to the extent increased by amendments to section 163(e)(5)(F) and section 163(i)(1) inserted by section 1232 of the American Recovery and Reinvestment Act of 2009.

SECTION 9. Section 52A of said chapter 63 is hereby amended by inserting after the word “exclusion”, in line 28, as so appearing, the following words:- and without regard to section 108(i) of the Code.

SECTION 10. Paragraph (b) of subsection (1) of said section 52A of said chapter 63, as so appearing, is hereby amended by adding the following clause:-

(vi) the deduction described in section 163(e)(5) of the Code to the extent increased by amendments to section 163(e)(5)(F) and section 163(i)(1), inserted by section 1232 of the American Recovery and Reinvestment Act of 2009.

SECTION 11. Item 4000-0320 of section 2 of chapter 182 of the acts of 2008 is hereby amended by inserting after the words "rendered in the current fiscal year" the following words:- ; provided further, that for the purpose of accommodating discrepancies between the receipt of retained revenues and related expenditures, the department may incur expenses, and the comptroller may certify for payment, amounts not to exceed the lower of this authorization or the most recent revenue estimate as reported in the state accounting system.

SECTION 12. Said chapter 182 is hereby further amended by striking out section 84 and inserting in place thereof the following section:-

Section 84. Notwithstanding any general or special law to the contrary, the comptroller shall, no later than June 30, 2009, transfer the interest earned from the Commonwealth Stabilization Fund during fiscal year 2009 to the General Fund. If the interest earned by the Commonwealth Stabilization Fund during fiscal year 2009 is less than \$91,000,000 then the amount transferred shall be \$91,000,000. The comptroller shall take the overall cash flow needs of the commonwealth into consideration in determining the timing of any transfer of funds required by this section.

SECTION 13. Section 86 of said chapter 182 is hereby amended by striking out the figure “\$372,000,000” and inserting in place thereof the following figure:- \$352,000,000.

SECTION 14. Subsection (b) of section 88 of said chapter 182 is hereby amended by striking out the second sentence and inserting in place thereof the following sentence:- Not less than \$1,102,561,456 shall be transferred from the General Fund to the Commonwealth Care Trust Fund and not less than \$47,996,382 shall be transferred from the Commonwealth Care Trust Fund to the Health Safety Net Trust Fund.

SECTION 15. Section 61 of chapter 302 of the acts of 2008 is hereby repealed.

SECTION 16. Notwithstanding federal income tax treatment to the contrary, for purposes of chapters 62 and 63 of the General Laws, the rules of section 382 of the Internal Revenue Code shall be applied without regard to the treatment of a change in ownership of a bank or other corporation provided in Internal Revenue Service Notice 2008-83 or in any federal statutory or administrative codification, supplement, or implementation of such Notice. For purposes of said chapters 62 and 63, Internal Revenue Service Notice 2008-83 and any such codification, supplement, or implementation shall have no force or effect in any taxable year.

SECTION 17. Notwithstanding federal income tax treatment to the contrary, for purposes of chapters 62 and 63 of the General Laws, section 382(n) of the Internal Revenue Code, inserted by the American Recovery and Reinvestment Act of 2009, shall have no force or effect in any taxable year.

SECTION 18. Notwithstanding any general or special law to the contrary, the comptroller shall, in consultation with the secretary of administration and finance, transfer not more than \$2,681,250 from the General Fund to the Division of Energy Resources Credit Trust Fund, established by subsection (b) of section 13 of chapter 25A of the General Laws.

SECTION 19. Notwithstanding any general or special law to the contrary, the comptroller may, on or before June 30, 2009, transfer not more than \$461,000,000 to the General Fund from the Commonwealth Stabilization Fund, but the comptroller shall instead transfer a lesser amount if the secretary of administration and finance so requests in writing. The comptroller, in consultation with the secretary of administration and finance, may take the overall cash flow needs of the commonwealth into consideration in determining the timing of this transfer of funds. The comptroller shall provide a schedule of transfers to the secretary of administration and finance and to the house and senate committees on ways and means.

SECTION 20. Notwithstanding any general or special law to the contrary, the secretary of health and human services may authorize transfers from items 4000-0430, 4000-0600, 4000-0700, 4000-0870, 4000-0875, 4000-0880, 4000-0890, 4000-0891, 4000-0895, 4000-0990, 4000-1400 and 4000-1405 of section 2 of chapter 182 of the acts of 2008 to items 4000-0500 of said section 2 for the purpose of reducing any deficiency in items 4000-0500, but any such transfer shall take place not later than August 31, 2009.

SECTION 21. Notwithstanding any general or special law to the contrary, the comptroller shall reduce the chapter 70 portion of the final local aid payment for fiscal year 2009 to be made in June, 2009 by \$412,000,000 if the secretary of administration and finance certifies in writing to the comptroller, and has provided written notice to the house and senate committees on ways and means, that federal grant funds in the amount of \$412,000,000 have been obligated or expended so that all school districts will receive the full amount appropriated in section 3 of chapter 182 of the acts of 2008.

SECTION 22. Notwithstanding subsection (c) of section 10 of chapter 152 of the acts of 1997, \$50,000,000 of the balance in the Convention Center Fund, which the state treasurer and the secretary of administration and finance have determined to exceed the amount necessary to satisfy the requirement of sufficiency under said subsection (c), shall be transferred to the General Fund of the commonwealth, not later than June 30, 2009.

SECTION 23. Section 3 shall be effective for taxable years ending on or after January 1, 2009.

SECTION 24. Sections 5, 7 and 9 shall be effective for discharges in taxable years ending after December 31, 2008.

SECTION 25. Sections 4, 6, 8 and 10 shall apply to obligations issued after August 31, 2008 in taxable years ending after that date.